IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

MFA.No. 418 of 2001()

OPMV.345/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA

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APPELLANT: PETITIONER

AJI, S/O. PONNAPPAN ACHARI,
AGED 23 YEARS, PANAYIL MELATHIL HOUSE,
NUKKODU KARA, MULAVANA VILLAGE,
KOLLAM DISTRICT.

BY ADV. SRI.PAUL MATHEW (PERUMPILLIL)
SRI.JOBY JACOB PULICKEKUDY
SRI.ANIL GEORGE

RESPONDENTS: RESPONDENTS
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1. **JAYADEV DAS, S/O.SUKUMARAN,**
AGED 40 YEARS, KRISHNA NIVAS,
ELANGIPRA KARA, ELANJIPRA P.O.
ELANJIPRA VILLAGE,
MUKUNDAPURAM TALUK.

2. **S.J.DEVDAS, 11/65,**
KRISHNA NIVAS, ELANJIPRA P.O.
CHALAKUDY.

3. **ORIENTAL INSURANCE COMPANY LTD.,**
BRANCH OFFICE, ERNAKULAM.

4. **P.M.KARIM, H.NO. 2/698,**
COCHIN 1.

BY ADV. DR.ELIZABETH VARKEY - R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.418 OF 2001

Dated 12th July, 2007

JUDGMENT

Koshy,J.

Appellant/petitioner met with a motor accident due to the negligence of the driver of the vehicle insured by the third respondent insurance company. He claimed a compensation of Rs.2,50,000/=. The Tribunal awarded only Rs.64,160/=. Appellant wants enhancement of compensation. Hence, the only point regarding quantum of compensation is considered in this appeal. According to the appellant, he was a Mason and his monthly income was Rs.4,000/= per month. The accident occurred in 1997. No evidence was adduced to show that appellant was a Mason and his income was Rs.4,000/=. The Tribunal has taken Rs.1,500/= as the monthly income. We see no ground to interfere with the same. Claimant was aged 23 at the time of the accident. Tribunal has fixed 17 as the multiplier. Even though it was argued that a higher multiplier should be fixed, considering his age and present life span, taking guidance from the second schedule, we are of the opinion that there is no reason to change the multiplier fixed by the Tribunal. In this connection, we also refer to the three member bench decision of the Supreme Court in

Smt.Supe Dei and others v. ***M/s.National Insurance Company Ltd. and another*** (JT 2002 (Suppl.1) SC 451).

2. With regard to injuries, the Tribunal discussed the evidence as follows:

> "Ext.A6 is the treatment certificate issued from the Holy Cross Hospital, Kottiyam. It shows that the petitioner was admitted in the Holy Cross Hospital, Kottiyam on 23.12.1997 four days after the accident. The initial treatment was in the Nedumchalil Trust Hospital, Muvattupuzha. The petitioner has sustained the following injuries:
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> (i) comminuted compound fracture of both bones of left junction of middle and lower third;
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> (ii) lacerated wound on left thigh lateral aspect laterate muscles cut, bleeding;
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> (iii) lacerated wound over right forearm upper third.
>
> (iv) multiple incised wound 6 in number;
>
> (v) abrasions right upper eyebrow lateral edge and left great toe.
>
> Ext.A7 is the accident-cum-wound certificate issued from Nedumchalil Trust Hospital, Muvattupuzha. The petitioner had an inpatient treatment in the Nedumchalil hospital till 20.12.1997 for two days. He was admitted in the Holy Cross Hospital, Kottiyam afterwards on 23.12.1997. In the

Kottiyam hospital he was treated for scapula fracture followed by long leg cast. Since the fracture site was freely mobile he was treated with ender's pin fixation and bone grafting on 27.2.1998 followed by PTB cast on 11.4.1998. Full weight bearing was advised since 11.5.1998. Ext.A6 shows that the petitioner was on continuous treatment in the hospital till 11.5.1998. He was able to walk freely from 11.5.1998 onwards. The disability certificate was also produced in this case certifying that the petitioner is having 15% disability. The certificate was issued by an Orthopaedic Surgeon attached to the St.George Hospital, Muvattupuzha. The doctor who has issued the disability certificate certifies that the petitioner is having the following defects:

(i) limbing left side;

(ii) 1 cm. shortening of left lower limb below knee level;

(iii) 20° limitation of flexion of left knee joint;

(iv) 10° limitation of plantar flexion of left foot;

(v) 3 cms. Waisting of left thigh muscles;

(vi) 1 cm. waisting of left calf muscles;

(vii) 20 cms. Long irregular on the lateral aspect of left thigh;

(viii) sitting on the ground in squatting position difficult;

(ix) 15 cms. Long scar on the anterior aspect of left leg;

(x) 10 cms. Long scar over the left iliac crest.

> The fracture of both bones was united with metallic implant inside. Considering these deformities the doctor was of the opinion that the person has 15% disability the functional disability."

Even though doctor was examined to prove the certificate, the Tribunal did not accept the same because he has not treated the patient. That is not a ground for assessing permanent disability. Once there is permanent disability, that disability can be assessed by a competent doctor who examined the claimant. He need not have treated the claimant. We have also gone through the medical records and no material was pointed out in the cross examination to show that his assessment was wrong. If compensation is calculated for 15% disability the amount payable will be 45,900/= (1,500 x 12 x $\frac{15}{100}$ x 17). The Tribunal granted only Rs.24,480/= for disability and loss of earning power. Therefore, the additional compensation payable under this head will be Rs.21,420/=. Even though it was contended that the compensation awarded under other heads also need enhancement, we are of the opinion that considering the total compensation awarded, no enhancement is necessary under other heads. The above amount of Rs.21,420/= should

be deposited by the third respondent insurance company with 7% interest from the date of application till its deposit.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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